

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 03 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CHESTER S. GARBER; et al.,

Appellants,

v.

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA,

Appellee,

and

JAMES SALVEN, Chapter 7 Trustee,

Trustee.

No. 06-15570

D.C. No. CV-04-06040-REC

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
Robert E. Coyle, District Judge, Presiding

Argued and Submitted May 14, 2008
San Francisco, California

Before: HUG, KLEINFELD, and N.R. SMITH, Circuit Judges.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

The Garbers did not file their notice of appeal within 30 days after the judgment in the district court was entered, as required by Fed. R. App. P.

4(a)(1)(A). National Union's motion to amend the district court order did not toll the thirty day time limit because the motion addressed a collateral and independent issue from the merits of the case.¹

Even if the appeal was not filed late, the bankruptcy court did not abuse its discretion by authorizing payment to National Union from the bankruptcy estate *nunc pro tunc*. National Union satisfactorily explained its failure to obtain prior judicial approval and demonstrated that its services benefitted the bankrupt estate in a significant manner.²

DISMISSED.

¹ See Buchanan v. Stanship, Inc., 485 U.S. 265 (1988); Leslie v. Grupo ICA, 198 F.3d 1152 (9th Cir. 1999); Lupo v. R. Rowland and Co., 857 F.2d 482 (8th Cir. 1988).

² In re Atkins, 69 F.3d 970, 973 (9th Cir. 1995).